

REMARKS

Favorable reconsideration of this application is requested in view of the foregoing amendments and the following remarks. Claims 19-40 are pending in the application. Claims 9-10 are canceled without prejudice or disclaimer. Claims 1-8 and 11-18 were previously cancelled without prejudice or disclaimer.

The following is to clarify the record. This application is a divisional of U.S. Pat. No. 6,858,455 which issued with method claims. Applicants canceled method claims 1-8 from this divisional application by preliminary amendment because method claims 1-8 were elected in U.S. Pat. No. 6,858,455 in response to a restriction requirement. However, it is important understand that there was NO requirement for restriction or requirement for election of species in this application prior to (or after) the Office Action dated April 6, 2005. The statement at page 2, section 1 of the Office Action dated April 6, 2005 regarding an alleged election without traverse is clearly erroneous for at least the following reasons. First, there was no requirement for restriction or election of species mailed by the Office in this application prior to the Office Action dated April 6, 2005. Second, there was no indication in the Office Action dated April 6, 2005 of a telephone call from the Examiner to Applicant's representative seeking an oral response to a requirement for restriction or election of species. Third, there was no indication in the Office Action dated April 6, 2005 that Applicant's representative orally responded to such a requirement. Fourth, Applicant's representative simply not make an oral election because there was no telephone call since there was no requirement. Therefore, the statement at page 2, section 1 of the Office Action dated April 6, 2005 regarding an alleged election without traverse is clearly erroneous because it has no basis in fact. Consequently, the withdrawal of claims 11-18 from consideration in the Office Action dated April 6, 2005 is also clearly erroneous because there was no election since there was no requirement for restriction or requirement for election

of species. Clearly, the Office Action dated April 6, 2005 should have included an examination of claims 11-18. Applicant's statement regarding the alleged election at page 7 of the response filed August 8, 2005 has no effect because there was no election since there was no requirement. This mis-statement by Applicant's representative was precipitated without deceptive intent due to the erroneous statement in the Office Action dated April 6, 2005 regarding the election and the erroneous withdrawal from consideration of claims 11-18 in the Office Action dated April 6, 2005. Moreover, the withdrawal of claims 19-29 from consideration in the Office Action dated November 5, 2005 as allegedly constructively non-elected is also clearly erroneous since claims 19-20 were merely rewritten in independent form, while claims 21-25 depend from claim 20 and claims 26-29 depend from claim 19. Since claims 11-18 should have been examined in the Office Action dated April 6, 2005 and claims 19-29 should have been examined in the Office Action dated November 3, 2005, the Office Action dated November 3, 2005 clearly should NOT have been made final. Since was NO requirement for restriction or election of species in this divisional application, Applicants are now presenting new claims 30-36 that are also directed to apparatus and these new claims are fully supported by claims 11-17 as originally filed. Rather than delay the prosecution of this application by filing a petition challenging the withdrawal of claims and the finality of the Action dated November 5, 2005, Applicant is filing this response together with a request for continued examination to expedite the examination of the apparatus claims.

Claims 9-10 were rejected under 35 USC 103 as obvious over Choi et al. (US 6,472,802) in view of Spindt (US 5,235,244). These product by process claims are canceled without prejudice of disclaimer.

Accordingly, withdrawal of this rejection is respectfully requested.

Other than as explicitly set forth above, this reply does not include acquiescence to statements in the Office Action. In view of the above, all the claims are considered patentable and allowance of all the claims is respectfully requested. The Examiner is invited to telephone the undersigned (at direct line 512-394-0118) for prompt action in the event any issues remain that prevent the allowance of any pending claims.

In accordance with 37 CFR 1.136(a) pertaining to patent application processing fees, Applicant requests an extension of time from February 3, 2006 to March 3, 2006 in which to respond to the Office Action dated November 3, 2005. A notification of extension of time is filed herewith.

The Director of the U.S. Patent and Trademark Office is hereby authorized to charge any fees or credit any overpayments to Deposit Account No. 50-3204 of John Bruckner PC.

Respectfully submitted,

John Bruckner PC
Attorney(s) for Applicant(s)

John J. Bruckner
Reg. No. 35,816

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5708 Back Bay Lane
Austin, TX 78739-1723
Tel. (512) 394-0118
Fax. (512) 394-0119